UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1998/25
22 December 1997

ENGLISH
Original: ENGLISH/FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-fourth session
Item 5 of the provisional agenda

QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

Report of the Secretary-General pursuant to Commission on Human Rights resolution 1997/17

CONTENTS

	Page
Introduction	3
I. INFORMATION PROVIDED BY GOVERNMENTS	5
Cuba	5
Lebanon	6
Morocco	7
II. INFORMATION PROVIDED BY UNITED NATIONS BODIES	8
Department of Economic and Social Affairs	8
Department of Public Information	9

GE.97-14548 (E)

CONTENTS (continued)

		Page
	Division for Palestinian Rights	10
	United Nations Environment Programme	11
III.	INFORMATION PROVIDED BY SPECIALIZED AGENCIES	11
	Food and Agriculture Organization of the United Nations	11
	International Labour Organization	11
IV.	INFORMATION PROVIDED BY INTERGOVERNMENTAL ORGANIZATIONS	13
	Council of Europe	13
V.	INFORMATION PROVIDED BY NON-GOVERNMENTAL ORGANIZATIONS	14
	International Federation of Settlements and Neighbourhood Centres	14
	Pax Romana	16
VI.	CONCLUSIONS	16

Introduction

1. Since the 1970s, the Commission on Human Rights has been laying particular emphasis on, inter alia, issues related to economic and social rights. In 1986, the adoption of the Declaration on the Right to Development opened the way to a series of studies, mainly prepared by members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, e.g. the study on the right to adequate food (Mr. Eide); the study of the Special Rapporteur on Economic, Social and Cultural Rights (Mr. Türk); the study on the right to adequate housing (Mr. Sachar); the study on human rights and Extreme Poverty (Mr. Despouy); the study on impunity for violators of economic, social and cultural rights (Mr. Guissé); and the ongoing study on human rights and income distribution (Mr. Bengoa).

2. The World Conference on Human Rights, held in Vienna in June 1993, marked the beginning of a renewed effort to buttress the implementation of the body of human rights instruments adopted since 1948. In its paragraph 5, Part I, the Vienna Declaration and Programme of action recalled that "All human rights are universal, indivisible and interdependent and interrelated" and, in paragraph 98, Part II, that "to strengthen the enjoyment of economic, social and cultural rights, additional approaches should be examined, such as a system of indicators to measure progress in the realization of the rights set forth in the International Covenant on Economic, Social and Cultural Rights. There must be a concerted effort to ensure recognition of economic, social and cultural rights at the national, regional and international levels".

3. Paragraph 75, Part II, of the Vienna Declaration and Programme of Action is relevant to one of the subjects of the present report; the Conference encouraged "the Commission on Human Rights, in cooperation with the Committee on Economic, Social and Cultural Rights, to continue the examination of optional protocols to the International Covenant on Economic, Social and Cultural Rights". In this connection, the Commission, in its resolution 1994/20, invited the Committee to report on the steps taken for the drafting of an optional protocol. Furthermore, the Commission, in its resolution 1996/11, welcomed the information submitted by the Committee as contained on that issue (E/CN.4/1996/96). Finally, at its fifty-third session, the Commission had before it a report of the Committee on a draft optional protocol to the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1997/105), and it adopted resolution 1997/17 in which it decided to request the Secretary-General to submit reports to the General Assembly at its fifty-second session and to the Commission at its fifty-fourth session on progress towards the realization of the rights set forth in the International Covenant on Economic, Social and Cultural Rights, giving due reflection to: (i) the views of all relevant national and international organizations, governmental or non-governmental, on the opportuneness and resource implications of appointing a special rapporteur to encourage the promotion and protection of economic, social and cultural rights in general; and (ii) their reactions to the report of the Committee on Economic, Social and Cultural Rights on a draft optional protocol for the consideration of communications concerning non-compliance with the International Covenant on Economic, Social and Cultural Rights.

4. In order to obtain updated information in this regard, the Secretary-General, on 5 August 1997, sent a note verbale to Governments and a letter to United Nations bodies, specialized agencies, and intergovernmental and non-governmental organizations.

5. As of 17 November 1997, replies had been received from the following Governments: Cuba, Lebanon and Morocco.

6. Replies had also been received from the following United Nations bodies: Crime Prevention and Criminal Justice Division, Department of Economic and Social Affairs, Department of Humanitarian Affairs, Department of Public Information, United Nations Environment Programme, United Nations University.

7. The following specialized agencies replied: Food and Agriculture Organization of the United Nations, International Labour Organization, United Nations Industrial Development Organization and the World Bank.

8. The Council of Europe sent a reply.

9. The following NGOs replied: International Federation of Settlements and Neighbourhood Centres and Pax Romana.

10. The Crime Prevention and Criminal Justice Division, the Department of Humanitarian Affairs, the United Nations Industrial Development Organization, the United Nations University and the World Bank stated that they did not have any information to provide.

11. It should be recalled that the work of the Committee on a draft optional protocol granting individuals or groups the right to submit communications concerning non-compliance with the Covenant commenced in 1990. In 1992, the adoption of such a protocol was recommended by the Special Rapporteur of the Sub-Commission on the realization of economic, social and cultural rights, Mr. D. Türk, in his final report (E/CN.4/Sub.2/1992/16). Subsequently, at the Committee's request, one of its members, Mr. P. Alston, prepared four reports which constituted the basis for comprehensive discussions, especially from the eleventh to the fifteenth session of the Committee.

12. Document E/CN.4/1997/105 contained an in-depth analysis of the debates of the Committee. The first matter the Committee addressed was the necessity of introducing the right to petition in the Covenant through the adoption of an optional protocol. While noting that similar bodies either were exploring the possibility of introducing such a mechanism or had already adopted an additional protocol, the Committee believed that, if the principle of the indivisibility, interdependence and interrelatedness of civil and political, and economic, social and cultural rights was to be upheld in the work of the United Nations, it was essential that a complaint procedure be established under the International Covenant on Economic, Social and Cultural Rights. After a lengthy discussion, the Committee decided not to recommend the inclusion of an inter-State complaints procedure on the ground that such procedure is rarely used even when available.

13. The Committee also expressed a strong and clear preference for the inclusion of an individual right to petition as well as for the inclusion of

groups whose members, one or more of whom claimed to be victims of a violation. A related issue was whether the right to submit a communication should be extended to "third parties", that is individuals and groups who, although not themselves victims of a violation, are acting on behalf of alleged victims. The Committee eventually adopted this option, but underlined that "third parties" could act only with the knowledge and the agreement of the alleged victim.

14. The Committee also recommended that the optional protocol should apply in relation to all economic, social and cultural rights as set forth in the Covenant and that this would include all rights contained in articles 1 to 15 with the exception of the right to self-determination which would be considered only insofar as the economic, social and cultural rights dimensions of that right were involved. The majority of the Committee members expressed a clear preference for a comprehensive approach which would require any State becoming a party to the optional protocol to accept the relevant procedure in relation to all the rights recognized in the Covenant.

15. The proposal relating to the appointment of a Special Rapporteur on economic, social and cultural rights by the Commission on Human Rights was made by the Committee at its fifteenth session. The Committee noted that "while there are a large number of thematic and related mechanisms dealing with different aspects of civil and political rights, there is none dealing solely with the economic, social and cultural rights recognized in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, despite the acknowledged interdependence, indivisibility and interrelatedness of the two sets of rights" (E/1997/22-E/CN.12/1996/6, para. 390). It is worth recalling that the Sub-Commission, in its resolution 1988/33, had entrusted one of its members, Mr. D. Türk, with a study of problems, policies and progressive measures relating to the effective realization of economic, social and cultural rights.

16. Recently, in addition to the activities of the groups established to examine the right to development, the Commission on Human Rights has focused its attention on issues related to economic rights such as the effects of structural adjustment and foreign debt policies on the full enjoyment of human rights. As regards the effects of structural adjustment policies, the Commission on Human Rights, in its decision 1996/103, decided to establish an open-ended working group on structural adjustment programmes and economic, social and cultural rights. Furthermore, in its decision 1997/103, the Commission entrusted its Chairman with the appointment of an independent expert who will submit a report to the next session of the working group and to the Commission at its fifty-fourth session.

I. INFORMATION PROVIDED BY GOVERNMENTS

Cuba

[Original: Spanish]
[15 October 1997]

The Government of Cuba is of the opinion that it is not appropriate to appoint a special rapporteur on economic, social and cultural rights. Such a step would be contrary to United Nations efforts to simplify the

Organization's structures and make them more efficient and effective, and to avoid the duplication and overlapping of functions and mandates. Cuba considered that the appointment of a special rapporteur on these rights would not guarantee their effective promotion and protection. It could only give an inventory of rights that are not being realized and of daily calamities in all parts of the world, with which we are all familiar. What is needed, with regard to the effective promotion and protection of those rights, is for the Organization and its Member States to take more decisive steps towards the inalienable right to development, understood not only as economic growth but also as eradication of poverty and the satisfaction of the basic material and spiritual needs of the human being in conditions of equal opportunity. Given the universality, equality, interdependence and interrelationship between all human rights, the effective realization of the right to development, is, in the conditions experienced by the developing countries, a prerequisite for the effective promotion and protection of all human rights. Genuine international cooperation, without conditionality, is essential for this purpose. The developed countries that control technologies, financial capital, trade flows and investments, as well as the exchange markets, have a fundamental role to play in this regard, since without their assistance the obstacles to the realization of the right to development cannot be overcome, nor can current trends in this area be reversed. International cooperation for development cannot be a gift or favour for the poorest; it is in all cases a moral and historical obligation of the richest countries towards the developing world. The Government of Cuba hoped that the international community will focus its attention and its actions, in the first place, on the factors preventing the effective realization of economic, social and cultural rights, particularly in the developing countries.

Lebanon

[Original: Arabic]
[24 September 1997]

1. The Government of Lebanon has established the Public Housing Agency in accordance with Act No. 539 of 24 July 1996. The main aims and functions of the said Agency, the purpose of which is to make suitable housing available to needy categories at low rates of interest, are as follows.

2. The conduct of housing studies and surveys in all parts of Lebanon; cooperation with the competent government departments in connection with housing studies, surveys and statistics. To this end, the Agency may commission consultants and experts or conclude contracts with national, foreign regional or international bodies, institutions and funds in accordance with the provisions of the laws in force.

3. The Agency also facilitates the housing of beneficiaries in the following ways:

(a) Programmed construction of dwellings and their appurtenances either directly or through third parties;

(b) Encouragement of regulated savings and loan schemes for housing purposes;

(c) Provision of medium and long-term loans for:

(i) Approved bodies wishing to construct dwellings for sale to beneficiaries meeting the stipulated conditions, with the exception of commercial companies;

(ii) Beneficiaries wishing to construct dwellings on land which they own, or wishing to purchase dwellings which have been completed or are under construction or to extend or renovate their dwellings;

(iii) Approved bodies wishing to construct dwellings for rent to their employees.

4. Under the terms of the Act establishing the Public Housing Agency, the persons benefiting from its provisions also enjoy, as an incentive, exemption from the following taxes and duties:

(a) The tax payable in respect of the conveyance and mortgage of, or release of mortgage on, the dwelling from which they benefit;

(b) The stamp duty payable in respect of contracts, deeds and transactions pertaining to their acquisition of their dwelling.

Morocco

[Original: French]
[6 September 1997]

1. Morocco attaches great importance to the effective enjoyment of economic, social and cultural rights. The Advisory Council on Human Rights, for example, which assists His Majesty, The King, in all human rights matters, has, in accordance with its assigned functions, carried out a comparative study of the draft labour code and the international conventions to which the Kingdom has acceded, including the International Covenant on Economic, Social and Cultural Rights and the International Labour Organization Conventions. The draft code proved superior in certain respects and equivalent in others, and to have a number of shortcomings. In order to remedy the latter, the Council made the following recommendations:

1. Need to consult beforehand with workers' representatives whenever all or some of the employees of an enterprise are to be dismissed for economic or technical reasons, to bring article 93 of the code into line with the provisions of article 13 of Convention No. 158 on termination of employment;

2. Raise the minimum age for the recruitment of minors by industry to 15 years in order to bring article 154 into line with article 2 of Convention No. 59 on the minimum age for admission of children to industrial employment (revised);

3. Define night work as that performed between 10 p.m. and 7 a.m. in order to bring article 173 into line with the provisions of article 2 of Convention No. 89 on night work of women (revised);

4. Authorize some sectors to use female labour in order to supplement article 173 of the Labour Code;

5. Prohibit the working day to be extended to more than 10 hours to bring article 1890 into line with the provisions of article 4 of Convention No. 30 on hours of work (commerce and offices);

6. Treat interruptions of attendance at work due to sickness as days of annual holiday with pay in order to bring article 229 into line with article 2, paragraph 3 (b), of Convention No. 52 on holidays with pay and with relevant case law;

7. Prohibit requiring a worker to manually transport any load which is likely to jeopardize his health or safety to make articles 25 et seq. fully consistent with the principle laid down in the provisions of article 3 of Convention No. 127 on maximum weight.

8. Allow a labour inspector the latitude to issue an order requiring his opinion to be sought before the initiation of any disciplinary proceedings against a medical officer, in view of the protection enjoyed by workers' representatives, in order to supplement article 415;

9. Establish the worker's right to take part in the cultural life of the enterprise and to undertake scientific, artistic or literary research and guarantee him the right to the fruits of his creative efforts;

10. The Council welcomes the Royal Decision decreeing the establishment of a Youth Employment Fund and expresses the hope that regulatory measures will be taken to put that project into effect and develop its positive aspects.

These recommendations met with the full approval of His Majesty, The King, and the Council had them inserted in the draft labour code currently before the Chamber of Representatives (Parliament).

2. Finally, the Council is currently working to lay the foundations for cooperation with the National Council for Youth and the Future and with the High Commissioner for the Disabled in areas of common concern.

II. INFORMATION PROVIDED BY UNITED NATIONS BODIES

Department of Economic and Social Affairs

[Original: English]
[20 August 1997]

The Department for Economic and Social Affairs expressed its concern that the appointment of a special rapporteur would essentially duplicate the monitoring process of the most recent United Nations conferences on economic and social issues.

Department of Public Information

[Original: English]
[17 October 1997]

1. Within the United Nations, the Department of Public Information (DPI) has been given primary responsibility for public information programmes and activities. In this context, it coordinates and initiates public information activities within the World Public Information Campaign for Human Rights, in collaboration with the Office of the High Commissioner for Human Rights and other United Nations system-wide partners. In order to raise awareness of the economic, social and cultural rights contained in the Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights, the Department carries on a multi-media approach to ensure the effective coverage of this issue as well as worldwide distribution of relevant public information materials on human rights. These rights are highlighted by the Department of Public Information in its regular programmes and within the context of the International Decade for the Eradication of Poverty (1997-2006) and of the other ongoing Decades, that offer further opportunities to generate awareness and understanding of the rights related to the International Covenant. In addition, the calendar of international days, especially International Women's Day and Human Rights Day, is utilized to generate public interest in the work of the United Nations in the field of human rights in raising awareness and promoting positive action.

2. The multi-media approach of the Department in the field of human rights includes the production of print material such as brochures, pamphlets, back-grounders, booklets, fact sheets, feature articles, posters and information kits regarding United Nations work in the field of human rights. The print materials, as well as press releases and United Nations documents, are distributed electronically by DPI in English, French and Spanish to the network of United Nations Information Centres (UNICs) and Services (UNISs) and are posted on the United Nations Website on the Internet at the following address: http:\\www.un.org. For example, from January 1996 to August 1997, DPI distributed 404 press releases produced at Headquarters. The Department also re-issues the press releases produced by the United Nations Information Service at Geneva as part of its media coverage for the Commission on Human Rights, the treaty monitoring bodies and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, to ensure wider dissemination. These press releases are also posted on the United Nations Home Page which receives 750,000 hits per week.

3. The Department continues to stress the realization of economic, social and cultural rights in many of its radio and television programmes which are produced regularly by the Department in a variety of languages. These are broadcast by national radio and television stations around the world. For instance, the "UN in Action" radio programme produced "Improving our living environment in an urbanizing world: adequate housing as a human right" and "Challenging of the right to housing". Such programmes are distributed to more than 1,700 broadcasting organizations worldwide. The Department also produces "UN in Action" television programmes on human rights issues for use on the Cable News Network (CNN) weekly programme "World Report", which is viewed in 90 countries.

4. The United Nations Information Centres and Services also emphasized the issue of the realization of economic social and cultural rights in the following activities:

(a) On Human Rights Day 1996, UNIS Bangkok issued an article entitled "Poverty, a violation of human rights", which was disseminated to the media, NGOs, academics and government representatives in the six countries UNIS services. The article was published in Nation and the Borneo Bulletin;

(b) UNIS Geneva provides coverage of the work of the Committee on Economic, Social and Cultural Rights and encourages media coverage of its proceedings. In 1996, UNIS Geneva organized, in conjunction with ATD Quart Monde, a major event with the Secretary-General and representatives of people living in absolute poverty as part of the observance of the Decade for the Eradication of Poverty. A video compilation on poverty in various parts of the world was distributed through the European Broadcasting Union on the same day. UNIS Geneva has been playing a growing role in highlighting the economic, social and cultural rights problems of the Palestinian people, through increased support to the Commissioner-General of United Nations Relief and Works Agency for Palestine Refugees in the Near East in 1997;

(c) UNIC New Delhi organized jointly with two NGOs (Commonwealth Human Rights Initiative and International Institute of Human Rights Society) a seminar on "Ways to implement the International Covenant on Economic, Social and Cultural Rights".

Division for Palestinian Rights

[Original: English]
[23 September 1997]

The Division for Palestinian Rights drew the attention of the Secretary-General to the report on the Seminar on Assistance to the Palestinian People, convened by the Committee on the Exercise of the Inalienable Rights of the Palestinian People, from 20 to 22 May 1997 at Amman, Jordan (A/52/179-E/1997/76) as well as two statements issued by the Bureau of the Committee (GA/PAL/742 and 766). In the first statement, the Bureau greatly deplored the beginning of construction of a new settlement at Jabal Abu Ghneim mountain, despite the overwhelming opposition of the international community as expressed in General Assembly resolution 51/133, which was cosponsored by 57 countries and received 130 votes in favour and only 2 against. The Bureau expressed its most serious concern at the negative implications that this decision may have for the future of the peace process and called for an end to the policies of military occupation, land confiscation and settlement, and for the resumption of negotiations based on the agreements already reached, in a spirit of mutuality and goodwill. Finally, the Division for Palestinian Rights made reference to the reports of the Secretary-General to the tenth emergency special session of the General Assembly (A/ES-10/6-S/1997/494 and Add.1 and Corr.1) and on assistance to the Palestinian people (A/52/159-E/1997/69).

United Nations Environment Programme

[Original: English]
[22 September 1997]

The United Nations Environment Programme was of the opinion that appointing a special rapporteur to encourage the promotion and protection of economic, social and cultural rights was a positive step. UNEP suggested that environmental aspects of human rights should be included in the purview of the special rapporteur.

III. INFORMATION PROVIDED BY SPECIALIZED AGENCIES

Food and Agriculture Organization of the United Nations

[Original: English]
[15 September 1997]

1. FAO supports the work of the Committee on Economic, Social and Cultural Rights and has read its report on the feasibility of an optional protocol to the Covenant with great interest. FAO supports any measures for the better implementation of economic, social and cultural rights in general, and the right to food in particular.

2. Regarding the idea of a special rapporteur to encourage the promotion and protection of economic, social and cultural rights, again, the organization would support any measures which would elevate the attention given to such rights in practice to the level of civil and political rights. However, FAO was not convinced that a special rapporteur would be the best mechanism for that purpose, for the following reasons. First, the mandate appeared to be very broad and carried the danger of the work being unfocused. Second, a promotional mandate in fact demanded more resources than a mandate on violations, but there was a danger that such a special rapporteur would be allocated the same resource support as the others. However, a narrow and well-defined mandate for a special rapporteur on one particular aspect of economic, social and cultural rights could be beneficial, whilst their general promotion might be better served by special efforts within the Office of the High Commissioner as a whole.

3. Lastly, FAO recalled Commission on Human Rights resolution 1997/8 regarding the right to food, and stressed that any further efforts in the field of economic, social and cultural rights should not divert attention or resources from the important mandate given to the High Commissioner for Human Rights in that resolution.

International Labour Organization

[Original: English]
[28 August 1997]

1. It may be recalled in the first instance that ILO has been making an active contribution to the work of the Committee on Economic, Social and Cultural Rights, with reports to each of its sessions on the application of

related ILO standards for the Covenant's articles most closely related to the ILO's mandate. The ILO also participates in the pre-sessional working groups of the Committee as an additional contribution to its deliberations. A large number of ILO Conventions, listed in each ILO report to the Committee, develops in more detail the subjects covered in several articles of the Covenant.

2. As concerns the report of that Committee on a draft optional protocol to the Covenant, the ILO had no particular comment to make. The Office has consulted with members of the Committee on the drafting of a possible protocol, to contribute its experience in the receipt and processing of complaints and other submissions on similar questions.

3. As to the desirability of opening the Covenant to individual communications, this is entirely up to the United Nations bodies concerned to decide. If such a procedure were to be adopted, it may be expected that many of the communications would be relevant to the ILO's many Conventions that cover the same matters as the Covenant. It would then be desirable to institute even closer consultations between ILO and the United Nations to ensure the consistency of international human rights law and its interpretation by different supervisory bodies of the United Nations system.

4. The appointment of a special rapporteur to encourage the promotion and protection of economic, social and cultural rights in general, which was raised in Commission on Human Rights resolution 1997/17, would appear, in ILO's opinion, to be closer to part of the mandate of the High Commissioner for Human Rights. The distinction between the work of such a special rapporteur and that of other thematic rapporteurs, several of whom would appear already to work in the area of economic, social and cultural rights, is unclear.

5. Finally, the work of this special rapporteur would, here as well, overlap quite considerably with the work of ILO, and duplication or possible contradiction should be avoided. For instance, the ILO Director-General's campaign for the ratification of the seven ILO Conventions on fundamental human rights has resulted in more than 60 ratifications of these instruments in just over two years.

6. The relationship between the work of the new special rapporteur and this ILO effort would need close examination. The same would apply to the large amount of ILO technical assistance to its constituents for the ratification and implementation of these and other conventions, many of which are intimately related to the Covenant. If such a special rapporteur were to be appointed, the question would be how the ILO should consider his/her assignment in its ongoing work in the area of human rights, and how the special rapporteur would take account of the ILO's work in the area related to his or her own mandate.

IV. INFORMATION PROVIDED BY INTERGOVERNMENTAL ORGANIZATIONS

Council of Europe

[Original: English]
[3 November 1997]

1. The Council of Europe strongly supports the work that is being carried out within the United Nations to elaborate an optional protocol to the International Covenant on Economic, Social and Cultural Rights, which is entirely in line with its objective of enhancing the principle of the indivisibility, interdependence and interrelatedness of all human rights.

2. The Additional Protocol to the European Social Charter providing for a system of collective complaints of 1995 (the Collective Complaints Protocol) has now been ratified by two Contracting Parties to the Charter. The three additional ratifications that are required in order that it may enter into force are expected to follow shortly and it is likely that the Protocol will enter into force early next year.

3. The main objective of the Protocol is to increase the efficiency of the supervisory machinery which is based solely on national reports. This is to be achieved in particular through the increased participation of management and labour and of non-governmental organizations.

4. Under the Protocol only certain organizations have the right to lodge complaints. There are some differences between the draft optional protocol to the Covenant and the Collective Complaints Protocol, which are due to the basic differences between a system of individual complaints and one of collective complaints.

5. It appears from the Explanatory Report to the Collective Complaints Protocol that because of their "collective nature" complaints may only raise questions concerning non-compliance with a State's law or practice with one of the provisions of the Charter and that individual situations may not be submitted. This collective nature of the complaints procedure is the reason why there is no requirement to exhaust domestic remedies under the protocol, nor any requirement that the organization lodging a complaint be a victim. It would seem to be clear, however, that the situation of individuals can be used by an organization to substantiate its complaint.

6. The draft optional protocol stipulates that domestic remedies have to be exhausted. The Council of Europe is wondering whether this would always be necessary considering the general nature of some of the rights contained in the Covenant and the fact that it is proposed to allow individuals or groups acting on behalf of an alleged victim to submit a communication (article 2, paragraph 1).

7. The Explanatory Report to the Collective Complaints Protocol states that a complaint may be declared admissible even if a similar case has been submitted to another national or international body (compare with article 3, paragraph 3 (b), of the draft optional protocol) and that the fact that the

substance of the complaint has been examined as part of the government reports procedure does not in itself constitute an impediment to the complaint's admissibility.

8. It appears that a complaint submitted under the Collective Complaints Procedure would not hinder a complaint concerning the same issues of facts and law to be submitted by or on behalf of an individual victim under the optional protocol.

9. Another important feature of the Collective Complaints Protocol is that the procedure will be shorter than that for examining reports as the Governmental Committee, which is the organ that in the reporting procedure selects those situations criticized by the Committee of Independent Experts, does not take part in it. This is a point on which management and labour insisted very strongly during the negotiation of the Protocol. The wording of several of the provisions of the Protocol also indicates that the procedure is conceived to be speedy. The Committee of Independent Experts, which has started the work to elaborate new rules of procedure for the collective complaints, has taken this into account.

10. If the objective of the optional protocol is also a speedy procedure, fixing a general time limit of six months for a State party to respond to a communication (article 6) would appear to be counterproductive. Time limits might be laid down by the Committee (or its Chairman) on a case-by-case basis.

11. Finally, the Council of Europe stresses that whereas States may choose which provisions to accept when ratifying the Social Charter, with certain requirements as to the minimum number, upon ratification of the Collective Complaints Protocol they have to accept collective complaints with respect to all rights contained in the provisions chosen. In order to respect the principle that all rights are equally important, it would seem clearly preferable to allow complaints in respect of any of the economic, social or cultural rights contained in the Covenant.

V. INFORMATION PROVIDED BY NON-GOVERNMENTAL ORGANIZATIONS

International Federation of Settlements and Neighbourhood Centres

[Original: English]
[30 September 1997]

1. IFS strongly supports the proposal to appoint a special rapporteur to encourage the promotion and protection of economic, social and cultural rights in general. IFS believes that a special rapporteur could assist States in implementing the obligation under article 2 of the Covenant. A special rapporteur could examine the laws of a country for their compatibility with the Covenant and suggest appropriate amendments, after consultation with relevant NGOs whose experience in this field could provide country specific practical suggestions. A special rapporteur can further the understanding of the obligations under the Covenant and suggest measures by which rights may be achieved on a gradual basis. Consultations with NGOs might bring a realistic and diverse approach to step-by-step solutions of human rights problems.

2. On the basis of field studies, a special rapporteur could explore new forms of financial assistance and development cooperation so as to increase available resources for human rights issues. The special rapporteur should be in a position to meet with the various international financial bodies and their regional counterparts in order to direct funds to the implementation of human rights. The special rapporteur could make available information about global and regional patterns of discrimination and affirmative action programmes that might be helpful in eliminating discriminatory practices.

3. The special rapporteur would be in a position to respond to the needs of and to protect migrants. In 1990 the General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, providing broader coverage than the earlier convention adopted by the ILO. The economic, social and cultural rights of migrant workers are in extreme need of protection and have been neglected to date.

4. The special rapporteur would also be able to respond to the needs of people who suffer in poverty and are not covered by existing human rights mechanisms. This would be particularly important for those who are not covered as "minorities" under the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities or "indigenous" under the draft United Nations declaration on the rights of indigenous people. The special rapporteur could also assist in the preliminary and subsequent evaluation of economic sanctions on people in the affected countries as applied by the Security Council.

5. IFS is very much in favour of the speedy adoption of the proposed draft optional protocol. It recognizes the controversies surrounding State versus State complaints but considers that this option should be retained for further discussion. The following comments focus on a limited number of provisions that are of particular concern to IFS.

(a) Preamble. IFS hopes that the present text, as contained in document E/CN.4/1997/105, will be maintained, particularly with regard to the emphasis on the indivisible and interdependent nature of all human rights;

(b) Article 1. IFS strongly advocates that everyone - individuals, groups and non-governmental organizations - should be able to submit communications in their own rights and on behalf of other victims;

(c) Article 2. IFS urges that the full range of rights under articles 1-15 be protected by the complaints procedure, including the right of all people to self-determination;

(d) Article 3. IFS welcomes this article but suggests that it should include a definition of "abuse";

(e) Article 4. IFS submits that the Committee "shall recommence examination of a communication earlier declared inadmissible if circumstances relevant to admissibility have changed";

(f) Article 5. IFS is in favour of providing for interim measures;

(g) Article 7. We suggest revising paragraph 1 to read: "the Committee may also take into account information obtained from other sources including NGOs ...".

Pax Romana

[Original: English]

1. Pax Romana in its submission underlined the importance of the effects of the activities of transnational corporations (TNCs) on the effective implementation of human rights, and asserted that their activities continuously violate human rights in developing countries. The organization described the activities of specific TNCs in several countries, in particular Shell Oil, Texaco and Amoco oil companies in Peru and Bolivia, the Unocal and Chevron oil companies with respect to the gas pipeline from Pakistan to Turkmenistan, the Nike athletic equipment company in Indonesia, and the Nestlé company in India. TNCs are also taking advantage of privatization programmes under structural adjustment policies to purchase national assets, for example in Guatemala where the Social Security Institute, which had been providing health services to the population, is being dismantled. These activities have led to environmental degradation, support for repressive regimes, labour unrest, unemployment, and the deprivation of indigenous and other groups of their economic, social and cultural rights.

2. Pax Romana stressed that, while TNCs had a direct impact on human rights, it did not consider all their activities to be negative; however, some control over the human rights effects of their actions was advisable. The process of privatization of the public sector and indiscriminately opening the door to foreign TNCs severely undermined the self-reliance of countries' economies and respect for human rights standards. When inspired by other considerations than merely profit, TNCs' activities can become a source of economic growth and stability.

3. In its report (E/CN.4/1997/20) the open-ended working group on structural adjustment programmes of the Commission on Human Rights declared that all efforts should be made to formulate, adopt and implement a code of conduct for TNCs. In 1996, a working group on the effect of TNCs was proposed by the Sub-Commission without any positive result. The need for a study of the question is becoming more and more urgent.

VI. CONCLUSIONS

1. First, it should be noted that some replies do not correspond to the request for information made by the Secretary-General, but they have nevertheless been included because they provided material for discussion on the realization of economic, social and cultural rights with regard to social measures at the national level, the right to self-determination and the right of countries to sovereignty over their natural resources. The United Nations Department of Public Information sent an exhaustive reply on its role in the dissemination of information and the promotion of activities relating to economic, social and cultural rights.

2. As regards the appointment of a special rapporteur on the realization of economic, social and cultural rights, the most common opinion is that the work of such a rapporteur would overlap the activities of other organizations and that his/her mandate, if lacking in specificity and clarity, could constitute an obstacle more than an achievement. It was also noted that the mandate of the High Commissioner for Human Rights, as established in General Assembly resolution 48/141, already contains provisions concerning the promotion and the protection of all human rights, including economic, social and cultural rights, and in particular the right to development. Other replies contained favourable views: the appointment of a special rapporteur was seen, in the light of article 2 of the Covenant, as a way to overcome obstacles to the realization of economic, social and cultural rights and to protect vulnerable groups such as migrants and minorities.

3. A few replies also mentioned the issue of a draft optional protocol. The need for a speedy procedure, the option to allow complaints in respect of any of the economic, social and cultural rights contained in the Covenant, the option of retroactive action and the possibility of an inter-State complaints procedure were the highlights of the replies on the draft optional protocol.